

**TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed**

**Rule making related to railroads**

The Transportation Department hereby amends Chapter 800, “Items of General Application for Railroads,” Chapter 810, “Railroad Safety Standards,” and Chapter 821, “Highway-Railroad Grade Crossing Surface Repair Fund,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 327G.24.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 312.2, 327C.4, 327C.38, 327C.41, 327G.24 and 327G.30.

*Purpose and Summary*

This rule making corrects the name of the Modal Transportation Bureau throughout Chapters 800, 810 and 821.

The amendments to Chapter 800 correct the formatting within the definitions, require that affected railroads submit their annual reports to the Department electronically, and adopt 49 Code of Federal Regulations (CFR) Part 1152 as of October 1, 2021. Iowa Code section 327G.24 requires the Department to adopt rules consistent with the Surface Transportation Board (STB) regulation titled Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 United States Code 10903, which is found in 49 CFR Part 1152.

The Track Safety Standards of the Federal Railroad Administration (FRA) set out safety standards that are applicable to all railroads nationwide and are found in 49 CFR Part 213. An amendment to Chapter 810 adopts 49 CFR Part 213 as of October 1, 2021. Iowa Code section 327C.4 requires the Department to inspect railroad tracks for safe operation. To accomplish this, the Department is a member of the FRA’s State Rail Safety Participation Program, which provides benefits to states in training and technical proficiency in understanding and applying federal standards.

The amendments to Chapter 821 make changes as to how the Department processes agreements to request that the jurisdiction and railroad provide cost estimates for work responsibilities. The amendments also remove the requirement for signing three copies of the agreement and update the description of how the Department provides payment to the railroad to include actual project cost.

Proposed federal regulations are published in the Federal Register (FR) to allow a period for public comment, and after adoption the final regulations are published in the FR. To ensure the consistency required by statute, the Department adopts the specified parts of 49 CFR as adopted by the STB and the FRA.

The following list provides a specific description of the amendments to the FR that have become final and effective from October 2, 2017, through October 1, 2021, and affect Chapters 800 and 810.

Part 213 (FR Vol. 84, No. 100, Pages 23730-23737, 5-23-19)

This final rule eliminates unnecessary costs and improves public access. The FRA has removed its civil penalties schedule and guidelines from the CFR and instead publishes them on the FRA website. Effective date: May 23, 2019.

Part 213 (FR Vol. 85, No. 195, Pages 63362-63392, 10-7-20)

This final rule revises FRA regulations governing the minimum safety requirements for railroad track. The changes include allowing inspection of rail using continuous rail testing, allowing the use of flange-bearing frogs in crossing diamonds, relaxing the guard check gage limits on heavy-point frogs

used in Class 5 track, removing an inspection-method exception for high-density commuter lines, and other miscellaneous revisions. The revisions benefit track owners, railroads, and the public by reducing unnecessary costs and incentivizing innovation while improving rail safety. Effective date: October 7, 2020.

Part 213 (FR Vol. 86, No. 83, Pages 23241-23260, 5-3-21)

This final rule provides the 2021 inflation adjustment amounts to civil penalties that may be imposed for certain U.S. Department of Transportation regulations in accordance with the Federal Civil Penalties Inflation Adjustment Act of 2015. Effective date: May 3, 2021.

Part 1152 (FR Vol. 83, No. 68, Pages 15075-15081, 4-9-18)

This final rule updates STB regulations to reflect certain statutory changes enacted in the Surface Transportation Board Reauthorization Act of 2015 and to replace certain obsolete or incorrect references in the regulations. Effective date: May 2, 2018.

Part 1152 (FR Vol. 83, No. 74, Page 16786, 4-17-18)

This is a citation correction to a rule document published on April 9, 2018.

Part 1152 (FR Vol. 84, No. 64, Pages 12940-12946, 4-3-19)

This final rule adopts modifications to STB regulations pertaining to certain payment, filing and service procedures. The adopted rule also updates and clarifies fees for copying, printing, and related services and removes outdated language from the STB regulations. Effective date: May 10, 2019.

Part 1152 (FR Vol. 84, No. 233, Pages 66320-66326, 12-4-19)

This final rule amends the STB regulations related to the National Trails System Act to: (1) provide that the initial term for certificates or notices of interim trail use or abandonment will be one year (instead of 180 days), (2) permit up to three one-year extensions of the initial period if the trail sponsor and the railroad agree, and (3) permit additional one-year extensions if the trail sponsor and the railroad agree and extraordinary circumstances are shown. Effective date: February 2, 2020.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 5, 2022, as **ARC 6574C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on November 9, 2022.

*Fiscal Impact*

The fiscal impact cannot be determined. The federal regulations adopted by this rule making were subject to fiscal impact review by either the FRA or the STB when enacted and were determined not to be cost prohibitive.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on January 4, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend rule 761—800.1(307) as follows:

**761—800.1(307) Definitions.** The following terms when used in this division of rules shall have the following meanings:

~~Crossing.~~ The “Crossing” means the point where the railroad tracks and highway meet at the same location.

~~Department.~~ The “Department” means the state department of transportation.

~~Railroad. Persons~~ “Railroad” means persons who own rail facilities or who are responsible for their operation and maintenance.

This rule is intended to implement Iowa Code sections 307.1 and 307.26.

ITEM 2. Amend rule 761—800.2(17A) as follows:

**761—800.2(17A) Location and submission of documents.** All documents concerning railroad matters which, according to statute or rule, must be submitted to the department shall be submitted to the following address: ~~Office of Rail~~ Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

This rule is intended to implement Iowa Code section 17A.3.

ITEM 3. Amend subrule 800.4(2) as follows:

**800.4(2)** A railroad company not required to submit an annual report to the Surface Transportation Board under 49 CFR Part 1241 shall submit an annual report to the department ~~on Form 010030 electronically~~ on or before April 1 following the close of the calendar year.

ITEM 4. Amend rule ~~761—800.15(327F)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 327F.31 and ~~2002 Iowa Op. Att’y Gen. \_\_\_\_\_ (#01-5-2)~~ 2001 Iowa Op. Att’y Gen. #01-5-2.

ITEM 5. Amend subrule 800.20(1) as follows:

**800.20(1)** 49 CFR Part 1152 contains the regulations governing the abandonment and discontinuance of railroad lines and rail transportation under 49 U.S.C. 10903 et seq. This part also contains the regulations and procedures for the acquisition or use of railroad rights-of-way proposed for abandonment for interim trail use and rail banking pursuant to 16 U.S.C. 1247(d).

For the purpose of this rule, ~~this part 49 CFR Part 1152~~ is adopted as of ~~October 1, 2017~~ October 1, 2021.

ITEM 6. Amend subrule 810.1(1) as follows:

**810.1(1) Standards.** The department adopts the railroad track safety standards contained in 49 CFR Part 213 (~~October 1, 2017~~ October 1, 2021).

ITEM 7. Amend subrule 810.5(2) as follows:

**810.5(2) Report procedure.**

a. No change.

b. If within 30 days the railroad company does not respond or if the response is unsatisfactory, the person may report the alleged violation to the department at the following address: ~~Office of Rail~~ Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

c. No change.

d. The director of the ~~office of rail~~ modal transportation bureau or the director's designee may request additional information from the person submitting the report, the railroad worker transportation company or the railroad.

e. The director of the ~~office of rail~~ modal transportation bureau or the director's designee, which may include peace officers ~~in the office of~~ within motor vehicle enforcement, may investigate the alleged violation.

f. The director of the ~~office of rail~~ modal transportation bureau or the director's designee shall issue a decision within 20 days of receipt of the report or 20 days after receipt of the requested additional information. The decision may include any order as necessary to enforce the requirements of Iowa Code section 327F.39, as set forth in Iowa Code section 327F.39(6).

g. and h. No change.

ITEM 8. Amend subrule 810.6(2) as follows:

**810.6(2) Report procedure.**

a. A person shall report an alleged violation in writing to the department at the following address: ~~Office of Rail~~ Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

b. No change.

c. The director of the ~~office of rail~~ modal transportation bureau or the director's designee may request additional information from the driver, railroad worker transportation company or railroad.

d. The director of the ~~office of rail~~ modal transportation bureau or the director's designee, which may include peace officers ~~in the office of~~ within motor vehicle enforcement, may investigate the alleged violation.

e. The director of the ~~office of rail~~ modal transportation bureau or the director's designee shall issue a decision within 60 days of receipt of the report or 60 days after receipt of the requested additional information. The decision may include any order as necessary to enforce the requirements of Iowa Code section 327F.39, as set forth in Iowa Code section 327F.39(6).

f. and g. No change.

ITEM 9. Amend subrule 821.2(2) as follows:

**821.2(2)** Program information, applications and application instructions are available on the department's ~~Web site~~ website at www.iowadot.gov. The program is administered by the ~~Office of Rail~~ Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1108.

ITEM 10. Amend subrule 821.3(3) as follows:

**821.3(3) Processing an agreement.**

a. No change.

b. If the work constitutes grade crossing surface repair and when funds are available in the repair fund, the department shall ~~furnish the railroad and request that the jurisdiction with three copies of an agreement for grade crossing surface repair and railroad provide cost estimates for the work for which each party is responsible. Upon receipt of the estimates, the department will furnish an agreement for grade crossing surface repair to the railroad and jurisdiction.~~

c. The railroad and the jurisdiction shall sign ~~all three copies of~~ the agreement and return ~~them~~ it to the department.

d. The department shall:

(1) No change.

(2) Sign ~~all three copies of~~ the agreement, retain one copy of the fully executed agreement, transmit one copy to the jurisdiction, and transmit one copy to the railroad, authorizing work to proceed.

ITEM 11. Amend paragraph **821.3(6)“c”** as follows:

c. Once the department approves the billing, the department shall pay to the railroad from the repair fund an amount equal to 60 percent of the actual project cost of the agreed-upon work.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/30/22.